

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CALVIN LETROY HUNTER	§	
v.	§	Cause # 4:10-cv-00778
RICK THALER	§	

**MOTION FOR DISCOVERY UNDER SPECIAL HABEAS RULE 6**

COMES NOW, the Petitioner, Calvin Hunter, by and through his attorney of record, Patrick F. McCann and files this, his Motion for Discovery Under Special Habeas Rule 6. The opposing counsel in this matter has been contacted and is unopposed to the motion.

I.

Dr. Denkowski, the State's primary witness in the trial of Calvin Hunter, has now been officially reprimanded by the Texas Medical Board. His methods for determining whether an individual was retarded have been found to be medically unsound and they have been rejected by the Texas mental health establishment. This means the jury received false and misleading material sponsored by the State, information critical to the jury's determination on both the *Atkins v. Virginia* issue, and the ultimate decision on death. Since the State essentially sponsored false expert testimony, it is a violation of due process under the Fourteenth Amendment and the Eighth Amendment's proscription against cruel or unusual punishment to have such a death sentence stand. This Honorable Court should grant this motion.

II.

A. A party shall be entitled to invoke the processes of discovery available under the Federal Rules of Civil Procedure if, and to the extent that, the judge it he exercise of his discretion and for good cause shown grants leave to do so, but not otherwise. If necessary

for effective utilization of discovery procedures, counsel shall be appointed by the judge for a petitioner who qualifies for the appointment of counsel under 18 U.S.C. 3006A.

- B. Requests for discovery shall be accompanied by a statement of the interrogatories or requests for admission and a list of the documents, if any, sought to be produced.
- C. If the respondent is granted leave to take the deposition of the petitioner or any other person the judge may as a condition of taking it direct that the respondent pay the expenses of travel and subsistence and fees of counsel for the petitioner to attend the taking of the deposition.

FOR THESE REASONS, the defendant respectfully prays that this Honorable Court will file and grant his Motion for Discovery under Special Habeas Rule 6 in the above styled and numbered cause.

Respectfully submitted,

/s \_\_\_\_\_  
Patrick F. McCann  
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Houston, Texas 77002  
713-223-3805  
713-226-8097 Fax

**CERTIFICATE OF CONFERENCE**

I attempted to reach the Asst. AG on this matter for the State via phone and but was not able to, but I believe he would be unopposed to this motion.

s/\_\_\_\_\_  
Patrick F. McCann

**CERTIFICATE OF SERVICE**

I certify that true and correct copy of the foregoing was delivered to the Office of the Attorney General, , P.O. Box, Capitol Station, Austin, Texas 78711, via first class mail on April 29, 2011.

s/\_\_\_\_\_  
Patrick F. McCann

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**ORDER FOR DISCOVERY**

This order directs the State to comply with the all requests as listed in the defense motion be subject to a show cause determination as to why they should not.

(GRANTED) (DENIED)

\_\_\_\_\_  
JUDGE PRESIDING

\_\_\_\_\_  
Date